

House Bill 1248 (AS PASSED HOUSE AND SENATE)

By: Representatives Williams of the 4th, Dickson of the 6th, and Tumlin of the 38th

A BILL TO BE ENTITLED

AN ACT

To amend Title 3 of the Official Code of Georgia Annotated, relating to alcoholic beverages, so as to provide for the comprehensive revision of provisions regarding alcoholic beverages; to change certain provisions regarding definitions; to change certain provisions regarding license or tax forms and filings; to change certain provisions regarding certain refunds or credits; to change certain provisions regarding limitations on credit; to change certain provisions regarding seizure and disposition of contraband; to change certain provisions regarding local government licensing powers; to change certain provisions regarding criminal penalties; to change certain provisions regarding license bonds; to change certain provisions regarding license or tax stamps; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 3 of the Official Code of Georgia Annotated, relating to alcoholic beverages, is amended by striking Code Section 3-1-2, relating to definitions regarding alcoholic beverages, and inserting in its place a new Code Section 3-1-2 to read as follows:

"3-1-2.

As used in this title, the term:

(1) 'Alcohol' means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

(2) 'Alcoholic beverage' means and includes all alcohol, distilled spirits, beer, malt beverage, wine, or fortified wine.

(3) 'Brewpub' means any eating establishment in which beer or malt beverages are manufactured or brewed, subject to the barrel production limitation prescribed in Code Section 3-5-36 for retail consumption on the premises and solely in draft form. As used in this article, the term 'eating establishment' means an establishment which is licensed

1 to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of
2 its total annual gross food and beverage sales from the sale of prepared meals or food.

3 (4) 'Broker' means any person who purchases or obtains an alcoholic beverage from an
4 importer, distillery, brewery, or winery and sells the alcoholic beverage to another broker,
5 importer, or wholesaler without having custody of the alcoholic beverage or maintaining
6 a stock of the alcoholic beverage.

7 (5) 'Commissioner' means the state revenue commissioner.

8 (6) 'County or municipality' means those political subdivisions of this state as defined by
9 law and includes any form of political subdivision consolidating a county with one or
10 more municipalities.

11 (7) 'Department' means the Department of Revenue.

12 (8) 'Distilled spirits' means any alcoholic beverage obtained by distillation or containing
13 more than 21 percent alcohol by volume, including, but not limited to, all fortified wines.

14 (9) 'Fortified wine' means any alcoholic beverage containing more than 21 percent
15 alcohol by volume made from fruits, berries, or grapes either by natural fermentation or
16 by natural fermentation with brandy added. The term includes, but is not limited to,
17 brandy.

18 (10) 'Gallon' or 'wine gallon' means a United States gallon of liquid measure equivalent
19 to the volume of 231 cubic inches or the nearest equivalent metric measurement.

20 (10.1) 'Hard cider' means an alcoholic beverage obtained by the fermentation of the juice
21 of apples, containing not more than 6 percent alcohol by volume, including, but not
22 limited to flavored or carbonated cider. For purposes of this title, hard cider shall be
23 deemed a malt beverage. The term does not include 'sweet cider.'

24 (11) 'Importer' means any person who imports an alcoholic beverage into this state from
25 a foreign country and sells the alcoholic beverage to another importer, broker, or
26 wholesaler and who maintains a stock of the alcoholic beverage.

27 (12) 'Individual' means a natural person.

28 (13) 'Malt beverage' means any alcoholic beverage obtained by the fermentation of any
29 infusion or decoction of barley, malt, hops, or any other similar product, or any
30 combination of such products in water, containing not more than 14 percent alcohol by
31 volume and including ale, porter, brown, stout, lager beer, small beer, and strong beer.
32 The term does not include sake, known as Japanese rice wine.

33 (14) 'Manufacturer' means any maker, producer, or bottler of an alcoholic beverage. The
34 term also means:

35 (A) In the case of distilled spirits, any person engaged in distilling, rectifying, or
36 blending any distilled spirits;

(B) In the case of malt beverages, any brewer; and

(C) In the case of wine, any vintner.

(15) 'Military reservation' means a duly commissioned post, camp, base, or station of a branch of the armed forces of the United States located on territory within this state which has been ceded to the United States.

(16) 'Package' means a bottle, can, keg, barrel, or other original consumer container.

(17) 'Person' means any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group or combination acting as a unit, body politic, or political subdivision, whether public, private, or quasi-public.

(18) 'Retail consumption dealer' means any person who sells distilled spirits for consumption on the premises at retail only to consumers and not for resale.

(19) 'Retailer' or 'retail dealer' means, except as to distilled spirits, any person who sells alcoholic beverages, either in unbroken packages or for consumption on the premises, at retail only to consumers and not for resale. With respect to distilled spirits, the term means any person who sells distilled spirits in unbroken packages at retail only to consumers and not for resale.

(20) 'Shipper' means any person who ships an alcoholic beverage from outside this state.

(21) 'Standard case' means six containers of 1.75 liters, 12 containers of 750 milliliters, 12 containers of one liter, 24 containers of 500 milliliters, 24 containers of 375 milliliters, 48 containers of 200 milliliters, or 120 containers of 50 milliliters.

~~(22) 'Tax stamp' means the official mark, stamp, or indicium of the department used to indicate the payment of taxes imposed by this title.~~

~~(23)~~(22) 'Taxpayer' means any person made liable by law to file a return or to pay tax.

~~(24)~~(23) 'Wholesaler' or 'wholesale dealer' means any person who sells alcoholic beverages to other wholesale dealers, to retail dealers, or to retail consumption dealers.

~~(25)~~(24) 'Wine' means any alcoholic beverage containing not more than 21 percent alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products. The term does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this Code section."

SECTION 2.

Said title is further amended by striking Code Section 3-1-3, relating to use of existing forms and filings relating to licenses or taxes, and inserting in its place a new Code Section 3-1-3 to read as follows:

"3-1-3.

Every form of license or tax document (~~including tax stamps~~) or other license or tax related filing lawfully in use immediately prior to July 1, 1981, may continue to be so used or be effective until the commissioner, in accordance with this title, otherwise prescribes."

SECTION 3.

Said title is further amended by striking Code Section 3-2-13, relating to issuance of refunds or credits for taxes paid or stamps purchased, and inserting in its place a new Code Section 3-2-13 relating to issuance of refunds or credits for taxes paid to read as follows:

"3-2-13.

(a) The commissioner may issue credits for taxes paid by or due from a wholesaler ~~or, in the case of taxes on distilled spirits, may issue credits for stamps purchased by a manufacturer, distiller, or wholesaler~~ when it is shown to the commissioner's satisfaction that any of the following events ~~have~~ has occurred:

(1) Alcoholic beverages have been received by the wholesaler through an error in shipment and the alcoholic beverages are returned to the shipper prior to any sale by the wholesaler in this state;

(2) Alcoholic beverages ordered by the wholesaler have been destroyed in transit prior to entry into the wholesaler's warehouse or storage area;

(3) Alcoholic beverages which are unfit for consumption upon receipt have been received by the wholesaler and the alcoholic beverages are returned to the shipper or destroyed prior to any sale by the wholesaler in this state;

(4) Alcoholic beverages have been destroyed while in the possession of a wholesaler within the state by an act of God, such as fire, flood, lightning, wind, or other natural calamity;

(5) Wines have been sold by the wholesaler for delivery and consumption outside the state, provided the sale and delivery shall in all respects comply with the requirements of Code Section 3-6-26.1; or

(6) Taxes were paid ~~or stamps were purchased~~ under a statute expressly held to be unconstitutional by a court of last resort and the payments were made under protest and the ground of the protest was the same as the basis for the ruling of unconstitutionality by the court of last resort.

(b) No person shall receive a credit for taxes paid ~~or stamps purchased~~ in any case where an amount equal to the amount of taxes paid ~~or to the cost of the stamps purchased~~ has been charged to or paid by any purchaser of the person seeking a refund or credit. When an applicant is issued a credit for taxes paid ~~or stamps purchased~~, in every case where an amount equal to the amount of taxes paid ~~or cost of the stamps purchased~~ has been charged to or paid by any purchaser of the applicant, the applicant shall refund or credit to the purchaser or customer an amount equal to the credit allowed by the commissioner.

(c) In the event that the commissioner issues a credit under this Code section to a person who has or will have insufficient tax liabilities to the State of Georgia against which to offset the credit, the commissioner shall issue a refund to such person for the unusable portion of the credit."

SECTION 4.

Said title is further amended by striking subsection (a) of Code Section 3-2-14, relating to limitations on credit, and inserting in its place a new subsection (a) to read as follows:

"(a) No credit for taxes paid on alcoholic beverages ~~or for stamps purchased~~ in payment of taxes on alcoholic beverages shall be allowed unless an application for credit is filed with the commissioner within 90 days from the date payment is received by the commissioner. If, in the opinion of the commissioner, an application for credit of taxes paid pursuant to this title contains a false statement, the application shall be denied. When an applicant is indebted to the state or an applicant is in violation of this title, the commissioner shall decline to approve the credit until the applicant has complied with the laws of this state. In no event shall interest be allowed on any refund or credit for taxes paid on alcoholic beverages ~~or for stamps purchased in payment of taxes on alcoholic beverages~~. Nothing contained in this Code section shall be construed so as to allow for a credit or refund of any license fee lawfully due or paid under this title."

SECTION 5.

Said title is further amended by striking subsection (b) of Code Section 3-2-33, relating to seizure and disposition of contraband alcoholic beverages, and inserting in its place a new subsection (b) to read as follows:

"(b) Any peace officer or authorized agent of the commissioner shall declare as contraband any alcoholic beverage:

(1) ~~Not bearing the required tax stamps or markings as provided by this title or not~~ reported for collection of taxes under a reporting system established by the commissioner;

(2) Found in any county, municipality, or unincorporated area of any county where the sale of alcoholic beverages is not lawful when the alcoholic beverage is intended for use or sale contrary to law; or

(3) Sold, conveyed, or possessed, concealed, stored, or held for sale by any person who has not first obtained all licenses required by this title."

SECTION 6.

Said title is further amended by striking subsection (c) of Code Section 3-3-2, relating to local government licensing powers, and inserting in its place a new subsection (c) to read as follows:

"(c) As a prerequisite to the issuance of any such initial permit or license only, the applicant shall furnish a complete set of fingerprints to be forwarded to the Georgia Bureau of Investigation, which shall search the files of the Georgia Crime Information Center for any instance of criminal activity during the two years immediately preceding the date of the application. The Georgia Bureau of Investigation shall also submit the fingerprints to the Federal Bureau of Investigation under the rules established by the United States Department of Justice for processing and identification of records. The federal record, if any, shall be obtained and returned to the governing authority submitting the fingerprints."

SECTION 7.

Said title is further amended by striking Code Section 3-3-23.1, relating to procedure and penalties upon violation of Code Section 3-3-23, and inserting in its place a new Code Section 3-3-23.1 to read as follows:

"3-3-23.1.

(a) It is unlawful for any person knowingly to violate any prohibition contained in Code Section 3-3-23, relating to furnishing alcoholic beverages to, and purchasing, attempting to purchase, and possession of alcoholic beverages by, a person under 21 years of age.

(b)(1) Any person convicted of violating any prohibition contained in subsection (a) of Code Section 3-3-23 shall, upon the first conviction, be guilty of a misdemeanor, except that any person convicted of violating paragraph (2) of subsection (a) of Code Section 3-3-23 shall, upon the first conviction, be guilty of a misdemeanor and shall be punished by not more than six months' imprisonment or a fine of not more than \$300.00, or both and except that any person convicted of violating paragraph (4) of subsection (a) of Code Section 3-3-23 shall, upon the first conviction, be guilty of a misdemeanor of a high and aggravated nature.

(2) Any person convicted of violating any prohibition contained in subsection (a) of Code Section 3-3-23 shall, upon the second or subsequent conviction, be guilty of a misdemeanor of a high and aggravated nature, except that any person convicted of violating paragraph (2) of subsection (a) of Code Section 3-3-23 shall, upon the second or subsequent conviction, be guilty of a misdemeanor.

(3) In addition to any other penalty provided for in paragraphs (1) and (2) of this subsection, the driver's license of any person convicted of attempting to purchase an alcoholic beverage in violation of paragraph (2) of subsection (a) of Code Section 3-3-23 upon the first conviction shall be suspended for six months and upon the second or subsequent conviction shall be suspended for one year.

(c) Whenever any person who has not been previously convicted of any offense under this Code section or under any other law of the United States or this or any other state relating to alcoholic beverages pleads guilty to or is found guilty of a violation of paragraph (2) or (3) of subsection (a) of Code Section 3-3-23, the court, without entering a judgment of guilt and with the consent of such person, may defer further proceedings and place such person on probation upon such reasonable terms and conditions as the court may require. The terms of probation shall preferably be such as require the person to undergo a comprehensive rehabilitation program (including, if necessary, medical treatment), not to exceed three years, designed to acquaint such person with the ill effects of alcohol abuse and with knowledge of the gains and benefits which can be achieved by being a good member of society. Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed accordingly. Upon fulfillment of the terms and conditions of probation, the court shall discharge such person and dismiss the proceedings against him or her. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this subsection or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this subsection may occur only once with respect to any person.

(d) Unless the officer has reasonable cause to believe such person is intoxicated, a law enforcement officer may arrest by issuance of a citation, summons, or accusation a person accused of violating ~~only paragraph (2) of subsection (a)~~ any provision of Code Section 3-3-23. The citation, summons, or accusation shall enumerate the specific charges against the person and either the date upon which the person is to appear and answer the charges or a notation that the person will be later notified of the date upon which the person is to appear and answer the charges. If the person charged shall fail to appear as required, the judge having jurisdiction of the offense may issue a warrant or other order directing the

1 apprehension of such person and commanding that such person be brought before the court
2 to answer the charges contained within the citation, summons, or accusation and the charge
3 of his or her failure to appear as required. Nothing in this subsection shall be construed to
4 invalidate an otherwise valid arrest by citation, summons, or accusation of a person who
5 is intoxicated.

6 (e) A law enforcement officer arresting a person by the issuance of a citation, summons,
7 or accusation under subsection (d) of this Code section may require any such person having
8 a driver's license or instruction permit to deposit such license or permit with the arresting
9 officer in order to ensure the appearance of such person to answer the charges against him
10 or her. The procedures and rules connected with the acceptance of such license or permit
11 and subsequent disposition of the case shall be the same as provided for the acceptance of
12 a driver's license as bail on arrest for traffic offenses pursuant to Code Section 17-6-11.

13 (f) In addition to any other punishment or sentence, the court may order all persons
14 convicted under subsection (b) of this Code section or sentenced under subsection (c) of
15 this Code section to complete a DUI Alcohol or Drug Use Risk Reduction Program
16 prescribed by the Department of Driver Services within 120 days of such conviction or
17 sentence. Failure to complete such program within 120 days shall be contempt of court and
18 shall be punished by a fine of not more than \$300.00 or 20 days imprisonment, or both. If
19 the conviction or sentence results from a charge of unlawful possession of alcoholic
20 beverages while operating a motor vehicle, the court shall report such conviction or
21 sentence to the Department of Driver Services within ten days after conviction or
22 sentencing."

23 SECTION 8.

24 Said title is further amended by striking Code Section 3-4-22, relating to license bonds, and
25 inserting in its place a new Code Section 3-4-22 to read as follows:

26 "3-4-22.

27 (a) All applicants for all licenses shall file with the commissioner, along with each initial
28 application, a bond:

29 (1) Conditioned to pay all sums which may become due by the applicant to this state as
30 taxes, license fees, or otherwise, arising out of the operation of the business for which
31 licensure is sought; and

32 (2) Conditioned to pay all penalties which may be imposed upon the applicant for failure
33 to comply with the laws and rules and regulations pertaining to distilled spirits.

1 The surety for the bonds shall be a surety company licensed to do business in this state, and
2 the bonds shall be in such form as may be required by the commissioner and may be for a
3 term of up to five calendar years.

4 (b) The bonds shall be in the following calendar year amounts:

5 (1) For distillers and manufacturers, \$10,000.00;

6 (2) For wholesale dealers and importers, \$5,000.00; and

7 (3) For retail dealers and brokers, \$2,500.00.

8 (c) All applicants for annual renewal of licenses other than retail licenses must file an
9 annual bond or have a multiyear bond on file with the department that extends at least
10 through the end of the calendar year for which renewal is sought. Such bonds must meet
11 the same conditions as those filed with the initial application."

12 SECTION 9.

13 Said title is further amended by striking subsection (a) of Code Section 3-4-23, relating to
14 certificate of residence required for retail dealer's license or tax stamps, and inserting in its
15 place a new subsection (a) to read as follows:

16 "(a) No retail dealer's license ~~or tax stamps for distilled spirits~~ shall be ~~sold~~ issued to any
17 person unless an application is filed with the commissioner, accompanied by a certificate
18 by the judge of the probate court of the county of the applicant's residence certifying that
19 the applicant has been a bona fide resident of the county or municipality for at least 12
20 months immediately preceding the application and is a resident of the county or
21 municipality where distilled spirits may be legally sold under this chapter."

22 SECTION 10.

23 Said title is further amended by striking Code Section 3-6-21, relating to filing of bonds, and
24 inserting in its place a new Code Section 3-6-21 to read as follows:

25 "3-6-21.

26 (a) All applicants for ~~all~~ licenses other than retail licenses shall file with the commissioner,
27 along with each initial application, a bond:

28 (1) Conditioned to pay all sums which may become due by the applicant to the state as
29 taxes, license fees, or otherwise, arising out of the operation of the business for which
30 licensure is sought; and

31 (2) Conditioned to pay all penalties which may be imposed upon the applicant for failure
32 to comply with the laws and rules and regulations pertaining to wines.

1 The surety for the bonds shall be a surety company licensed to do business in this state, and
2 the bonds shall be in such form as may be required by the commissioner and may be for a
3 term of up to five calendar years.

4 (b) The bonds required pursuant to subsection (a) of this Code section shall be in the
5 ~~following amounts:~~ amount of \$5,000.00

6 ~~(1) For wineries, \$5,000.00, and~~

7 ~~(2) For retail dealers, \$500.00.~~

8 ~~(c) The commissioner may waive the requirement of a surety on the bonds of applicants~~
9 ~~for retail licenses if he determines that a surety is not essential to the protection of the~~
10 ~~interests of the state.~~ All applicants for annual renewal of licenses other than retail licenses
11 must file an annual bond or have a multiyear bond on file with the department that extends
12 at least through the end of the calendar year for which renewal is sought. Such bonds must
13 meet the same conditions as those filed with the initial application."

14 SECTION 11.

15 All laws and parts of laws in conflict with this Act are repealed.